

SPECTRUM ACQUISITIONS, INC.

June 3, 2008

VIA ELECTRONIC FILING

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street SW, Room TW-A325
Washington, D.C. 20554

Re: Improving Public Safety Communications, WT Docket No. 02-55

Dear Ms. Dortch:

Spectrum Acquisitions, Inc. is concerned by a recent report suggesting that Sprint Nextel Corporation ("Sprint") and the Federal Communications Commission ("FCC" or the "Commission") are engaged in nonpublic negotiations that affect the material terms of the FCC's *Third Memorandum Opinion and Order*.¹ Specifically, on or about May 16, 2008, Medley Global Advisors (MGA) stated in a research note that Sprint Nextel probably will reach agreement with the Commission letting it stay on only some of the channels that the FCC's order in the *800 MHz Third Order* requires it to vacate. MGA further noted that "[n]egotiations began in earnest fairly recently and some of the groundwork was laid weeks prior to the release of the court's decision." Moreover, the research note observed that negotiations appear to be concentrating on the number of interleaved channels that Sprint could leave "without incurring any serious capacity constraints that could materially impact its iDEN and CDMA customer base," rather than on a broader extension.²

If accurate, the research note is highly troubling, because Sprint Nextel has not made the required public disclosures of such discussions. Further, the relief Sprint Nextel apparently is requesting can be sought only through filing a formal petition for

¹ Third Memorandum Opinion and Order, 22 FCC Rcd 17209 (2007)(*800 MHz Third Order*).

² *Communications Daily*, May 16, 2008, p. 9.

reconsideration subject to the Administrative Procedure Act's notice and comment rulemaking procedures.³

Assuming that the research note is accurate, Sprint Nextel effectively is seeking to persuade the Commission to reverse its policy determination in the *800 MHz Third Order* that eliminating or minimizing interference to NPSPAC licensees "takes precedence" over any disruption to be caused to Sprint Nextel's 800 MHz iDEN network.⁴ Having failed to plan and otherwise prepare for the vacation of its 800 MHz licenses by a deadline established more than three years ago, Sprint Nextel apparently is arguing that alternatives to the relief it has requested are nonviable, i.e., commercially unreasonable since substitute 900 MHz spectrum generally is inadequate to make up for its spectrum shortfall and constructing numerous additional cell sites would be prohibitively expensive.⁵

As we recently noted, Sprint Nextel and the Commission entered into an agreement to reorganize the 800 MHz Private Land Mobile Radio Band that was memorialized by the FCC's *800 MHz Report and Order* and *Supplemental Report and Order*.⁶ Pursuant to such agreement, the Commission considerably enhanced the value of Nextel's 800 MHz EA- and Site-licensed spectrum holdings by providing for the exchange of noncontiguous and encumbered spectrum for clean and contiguous spectrum.⁷ Moreover, pursuant to

³ 5 U.S.C. § 551 *et seq.* Interestingly enough, the D.C. Circuit Court of Appeals refused to rule on all but one of Sprint Nextel's arguments since it had failed to raise them or the issues to which they related by filing such a formal Petition for Reconsideration with the Commission following its release of the *800 MHz Third Order*. See *Sprint Nextel Corp. v. Federal Communications Commission*, 07-1458 (D.C. Cir., May 2, 2008), at 7-8. Perhaps one of the reasons for Sprint Nextel's reluctance to file such a Petition is its desire to limit opposition from the Association of Public Safety Communications Officials--International (APCO) and the public safety community generally to proposals that further would delay completion of the 800 MHz rebanding process. See, e.g., APCO Letter to FCC, Docket No. WT 02-55 (January 11, 2008); *Call for 800 MHz rebanding extension raises public safety's ire*, RCR Wireless news (September 25, 2006).

⁴ *800 MHz Third Order*, at 14972.

⁵ See *Sprint Nextel Corporation Waiver Request*, WT 02-55, at 3. Interestingly enough, it is impossible to respond to such "nonviability" argument since Sprint Nextel requested confidential treatment of the supporting details set forth in an exhibit to such Waiver Request. *Id.*, at 3 & n. 9.

⁶ *Spectrum Acquisitions, Inc., Opposition to Sprint Nextel Waiver Request*, Docket No. WT 02-55 (May 31, 2008).

⁷ *Id.*, at 9-10. Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, *et al.*, Report and Order, Fifth Report and Order, Fourth

a supposed “value-for-value” exchange, the FCC granted Nextel exclusively a 10 MHz license in the 1.9 GHz Band on a nationwide basis.⁸ Having received substantial benefits from the FCC valued by it at \$2.5 billion, Sprint Nextel now either is unable or unwilling to fulfill its 800 MHz rebanding commitments.⁹ In both the *800 MHz Report and Order* and the *800 MHz Third Order* the Commission effectively drew a “line in the sand” and notified Sprint Nextel of the consequences of its failing to vacate its licenses below 817 MHz/862 MHz by expiration the thirty-six (36)-month deadline.¹⁰ Such consequences included the imposition of substantial fines and/or the revocation of Sprint Nextel’s 1.9 GHz Band nationwide license.¹¹

Memorandum Opinion and Order, 19 FCC Rcd 14969 (2004), as amended by Erratum, 19 FCC Rcd 19651 (2004) and Erratum, 19 FCC Rcd 21818 (2004) (*800 MHz Report and Order*) and Supplemental Report and Order on Reconsideration, 20 FCC Rcd 16015 (2004) as amended by Erratum, 20 FCC Rcd 18970 (2005)(*800 MHz Supplemental Order*). See generally Preferred Communication Systems, Inc., Comment, Docket No. WT 02-55 (March 2, 2004) at 20-22, 24-35, Exhibits D, G and H.

However, interestingly enough, in the *800 MHz Report and Order*, the Commission rejected Verizon’s contention that such exchange represented a “windfall gain” to Nextel rather than a cost since its gain in “technical efficiency” would be “relatively small”, would be more than offset by the value of the non-contiguous spectrum rights being relinquished and Nextel’s inability to utilize fully the additional contiguous 800 MHz spectrum represented by the former NPSPAC Channels until the end of the rebanding process. *800 MHz Report and Order*, at 15117 ¶ 309. *Contra Determination of the Fair market value of the certain Portions of FCC Licensed Wireless Spectrum Proposed for Realignment by Nextel Communications, Inc Under FCC Docket No 02-55 as of December 31, 2002*, by Kane Reece Associates, Inc. attached to Letter from John T. Scott, III, Esq., Vice President and Deputy General Counsel, Verizon Wireless to Marlene H. Dortch, Secretary, Federal Communications Commission (*Kane Reece Study*), at Table 7; Letter dated May 27, 2004, from John T. Scott, III, Esq., Vice-President and Deputy General Counsel, to Marlene H. Dortch, Secretary, Federal Communications Commission; and Kane Reece Analysis of Sunfire Study, dated February 9, 2004, attached to Letter, dated February 10, 2004, from John T. Scott III, esq., Vice President and Deputy General Counsel—Regulatory Law, Verizon Wireless to Marlene H. Dortch, Secretary, Federal Communications Commission (*Kane Reece Study II*).

⁸ 800 MHz Report and Order, at 15106 ¶ 278.

⁹ Sprint Nextel Waiver Request, at 2.

¹⁰ *800 MHz Report and Order*, at 14988 ¶ 28; *800 MHz Third Order*, at 17215-16 ¶¶ 17-18.

¹¹ *Id.* See Letter dated April 19, 2007 from Brian Fontes, Vice President, Federal Relations, AT&T to Marlene H. Dortch, Secretary, Federal Communications Commission (*AT&T Letter*), at 4, 12-13.

As repeatedly noted in this proceeding, Sprint Nextel has been aware of the difficulties in meeting its 800 MHz rebanding obligations for several years and previously has sought delays in the Commission's deadlines.¹² In refusing such requests, the FCC has reaffirmed its policy determination that minimization, if not elimination, of interference to public safety systems "takes precedence" over disruption to Sprint Nextel's 800 MHz iDEN network and that noncompliance with the Commission's thirty-six (36) deadline month deadline will result in its imposition of sanctions.¹³

Spectrum Acquisitions, Inc. urges the Commission to require Sprint Nextel to fully and fairly disclose the arguments it is making to the FCC in seeking relief from its longstanding order to vacate all of the company's licenses below 817 MHz/862 MHz on or before June 26, 2008. If the MGA research note is accurate, both as a matter of law and substance, the issue Sprint Nextel is raising must be subject to full and open notice and comment procedures. If Sprint Nextel is seeking to persuade the FCC to reverse its fundamental policy that NPSPAC licensees "take precedence" over disruption to Sprint Nextel's 800 MHz iDEN network and modify the Commission's order that the company vacate all of its spectrum holdings below 871 MHz/862 MHz on or before the thirty-six (36) month deadline expiring on June 26, 2008, Sprint Nextel is required to file a formal Petition for Reconsideration. Its repeated attempts to avoid this step, for whatever reason, is legally unsupportable.

Pursuant to section 1.1206(b)(2) of the Commission's rules, 47 C.F.R. § 1.1206(b)(2), this letter is being filed electronically for inclusion in the public record of this proceeding.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Richard Cracraft", is positioned above the printed name.

Richard Cracraft
Executive Vice President

¹² See Spectrum Acquisitions, Inc., Opposition to Sprint Nextel Waiver Request, at 7-8.

¹³ See AT&T Letter, at 6-8, 10-11.